

**FREEHOLD BOROUGH PLANNING BOARD**  
**MINUTES OF APRIL 27, 2016**

**MONTHLY MEETING**

The monthly meeting of the Freehold Borough Planning Board was held on Wednesday, April 27th at 7:00 p.m. in the Council Room of the Municipal Building.

Mr. Reich stated that this meeting was provided in accordance with the Open Public Meeting Act, by providing a copy of the agenda to the official newspaper and posting same on the official bulletin board of the Municipal Building.

Mr. Reich opened the meeting with a Salute to the Flag.

**ROLL CALL**

PRESENT	MR. WILLIAM BARRICELLI
PRESENT	MR. CORNELIUS BEGLEY
PRESENT	MS. JAMIE BENNETT
PRESENT	MS. MICHELE GIBSON
PRESENT	MR. GARRY JACKSON
PRESENT	MS. ANNETTE JORDAN
PRESENT	MR. ADAM REICH
PRESENT	COUNCILMAN GEORGE SCHNURR
PRESENT	MR. JEFF FRIEDMAN
ABSENT	MS. DANIELLE SIMS

Mr. Reich read Item 3 on the Agenda as follows:

Approval of Minutes from the meeting of April 13, 2016.

Mr. Jackson suggested the minutes reflect the distinction between Freehold Borough, Freehold Township, Upper Freehold, etc. Going forward that will be specified.

Mr. Barricelli made a motion to approve the minutes, Ms. Jordan seconded.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr
Disqualified	0	
Absent	1	Sims

Councilman Schnurr and Ms. Bennett recused themselves and stepped down from the dais.

Mr. Reich read Item No. 4 on the Agenda as follows:

5. Application Number PB-UV-2016-001  
Applicant: Howard Klotzkin t/a Amazing Escape Room, LLC  
Location: 77 West Main Street, Block 35, Lot 40  
Request: Zoning Ordinance Interpretation/Use Variance continuation.

Mr. Ron Cucchiaro, Board Attorney, marked the following exhibits that were received since the last meeting:

Exhibit #O8 – Letter brief from Giordano, Halleran and Ciesla, dated April 20, 2016.

Exhibit #A6 - Letter brief from Vince Halleran, dated April 20, 2016.

Exhibit #O9 – Letter from Giordano, Halleran, Ciesla dated April 27, 2016.

Mr. John Giunco requested additional planning testimony.

Mr. Vincent Halleran and the board had no objection.

Mr. Giunco called Mr. Andrew Janiw, Principal and Founder of Beacon Planning Services in Colts Neck, NJ. Mr. Janiw presented his credentials and experience. The board accepted Mr. Janiw's credentials.

Mr. Giunco asked Mr. Janiw to provide the additional information that was discovered.

Mr. Janiw reviewed the ordinance and focused on the commonality of the professions listed in the ordinance. The Illustrated Book of Development Definitions was referenced and defined professional office as "The office of a member of a recognized profession maintained for the conduct of that profession." Mr. Janiw did not agree that team building was a profession. He referenced Black's Law Dictionary which states a profession is a "vocation requiring advanced education and training, especially one of three traditional learned professions; law, medicine and the ministry. Learned professions are characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place and of a profession like that of medicine, by intimate and delicate personal administration. Traditionally, the learned professions were theology, law and medicine. But some other occupations have climbed and others may still climb to the professional place. Collectively these are professions." Mr. Janiw stated this definition was upheld in numerous case law. Mr. Janiw cited the cases.

Mr. Janiw stated team building is not a profession. When team building is searched on the internet, other activities such as rock climbing, obstacle course and billiards are displayed as team building exercises, but not professional team building. Corporate team building requires participant assessment, participation in multiple exercises designed for specific tasks and evaluation and assessment.

Mr. Cucchiaro asked if it matters if this is legitimate team building or not. Mr. Janiw replied it does not, because team building is not a profession. The use is defined as a recreational or amusement use. That is the way applicant represents themselves on line and the applicant sells themselves as a reality game.

Mr. Janiw reported an Amazing Escape Room in Cherry Hill was opened by Mr. Klotzkin. This is located in a B-2 Highway Business Zone. Business uses are permitted. Cherry Hill stated the Amazing Escape Room is an indoor recreation and leisure facility which is permitted within the highway business zone, but must obtain a public amusement license. The Cherry Hill Code Enforcement Officer changed the use from B-Business to A3-Assembly. Mr. Janiw examined the Cherry Hill ordinance and found the permitted uses to be retail, business, amusement and public assembly.

Mr. Giunco asked for the findings from the NJ Supreme Court case N.E.R.I. vs. Highway Authority.

Mr. Janiw found the state's definition of professional services is defined as professions that are typically licensed and provide intimate services on a specialized basis, requiring a high level of education.

Mr. Halleran asked if the N.E.R.I. case was not a zoning case.

Mr. Janiw stated it was not.

Mr. Halleran questioned Freehold Raceway Mall's location.

Mr. Janiw stated the mall is not located in the Borough. He then listed the zones in the Borough that would permit a recreational and general assembly use; the B2B, REC, SOR districts.

Mr. Halleran asked how a profession climbs onto the list of professions.

Mr. Janiw referenced Black's Law Dictionary of Definitions for Profession; which stated other occupations have climbed and other may climb to the professional plan. Mr. Janiw does not believe team building has climbed to that level yet. An occupation can climb into that level by having the common traits of the other professions; education, licensure, code of ethics and code of conduct. None of these traits exist for team building and all of that is in common with the professions that are sited within this zone. Mr. Janiw confirmed the ordinance does not specify licensed professional. He believes that term is not specified, but implied by the professions that are listed as they require licensure.

Mr. Janiw reported there are few credentials needed to work at the Amazing Escape Room. There is no formal education and training required. Mr. Janiw has not reviewed the Amazing Escape Room Training Manual.

Mr. Halleran asked for a description of Professional Service Personnel and Professional Service Organization.

Mr. Janiw offered a paralegal as an example of Professional Service Personnel and doctor's office as an example of a Professional Service Organization.

Mr. Halleran asked if Mr. Janiw has been to the Amazing Escape Room.

Mr. Janiw confirmed he has not personally been to an escape room. His opinions were formed on the information that is provided from the literature provided. He is not aware of what any companies do to evaluate their employees' experiences and outcomes. Mr. Janiw stated this is open to the general public; it is not strictly a corporate use. His opinion is the companies that send their employees there are rewarding them with an entertainment experience. Mr. Janiw confirmed he is not relying on any of the comments on Yelp to form his opinion.

Mr. Cucchiaro reported after further investigation, it is recommended the board disregard the Yelp evidence in concurrence with on the objections of Mr. Halleran at the last meeting.

Mr. Halleran asked if the increased number of people on the application is a problem.

Mr. Janiw replied it goes to the intensity of use.

Mr. Cucchiaro reported the intensity of use is irrelevant in determining if the use is professional.

The floor was opened to Board questions.

Mr. Barricelli asked for examples of other generally recognized professions that would be accepted under the ordinance.

Mr. Janiw stated a financial advisor would qualify. They are licensed, have specific training and testing. That field is not listed but would be a recognized professional service.

Mr. Begley asked if the percentage of corporate use would make it professional.

Mr. Janiw replied team building is not a recognized profession. The percentage of use is irrelevant.

Mr. Reich asked if definitions from Black's Law Dictionary and the Baylinson case need to be wholly applied.

Mr. Janiw answered it is preferred if the ordinance includes the definition for what the intent is within the ordinance. In this case, the ordinance does not include professional office. The other resources were available for definitions; Mozkowitz and Black. The definition does need to be looked at in its totality. Sometimes there may be qualifiers that should be considered.

Mr. Reich asked if the definition in the Baylinson case could or could not apply in this use, specifically the specialized knowledge, labor or skill and the labor or skill is predominately mental or intellectual, rather than physical or manual.

Mr. Janiw agreed that this use is predominately mental. There is a distinction between licensure, professional organizations that require conducts of ethics, recognition and additional education. None of that applies to anyone working at the Amazing Escape Room. Mr. Janiw stated assessment is necessary to distinguish corporate team building vs. the amusement team building not to distinguish profession from non-profession use.

Mr. Cucchiaro asked if a psychologist, who has a Ph.D. would be considered an accepted profession. This function is primarily mental as opposed to physical.

Mr. Janiw replied it would because that would require specific educational training, peer assessment as well as a code of ethics and licensure. The mental aspect could not be considered by itself. All factors have to be considered together.

The floor was opened to Public questions.

Heidi Neufeld, 16 Jenson Court, Old Bridge asked how a professional service differs from a career.

Mr. Janiw replied a career is your job. Becoming a professional is something you achieve through very specific education, training, licensure, acceptance and oversight from a group of peers.

Ms. Neufeld asked if team building would fall under the umbrella of project manager, which is a professional service that requires education and licensing.

Mr. Janiw replied project manager is too broad a term. There is no certain license or accreditation.

Mr. Marvin Fuss, 3 Avon Drive, Freehold Township asked if zoning has anything to do with helping a community remain stable.

Mr. Janiw replied there are specific purposes of zoning written into the municipal land use law. There are specifics that guide zoning principals and those include protecting the neighbors.

Rabbi Abraham Bernstein, 351 Stillwells Corner Road, Freehold Township asked if there is a distinction between a professional use or a professional service and if sales were happening in the location, would that be professional.

Mr. Janiw replied yes. A professional use is a location in which a professional conducts their vocation. Mr. Janiw explained the difference between professional use and retail/business use in response. He added sales would be considered retail or business, not professional. In response to Rabbi Bernstein's question as to non-ordained rabbis being a professional, Mr. Janiw stated all rabbis who are teachers receive specialized training and education.

Mr. Richard Matisoff, 8 Empress Court, Freehold Township asked if a music school could be opened in this zone.

Mr. Janiw responded based on the ordinance, under the Section B, it permits a group of non professional uses which includes music studio.

Mr. Begley made a motion to close the Public questions, seconded by Mr. Barricelli.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr

Disqualified 0  
Absent 1 Sims

Mr. Friedman asked what an office is and what is in an office.

Mr. Janiw replied an office is a space dedicated to the practice of that profession. Contents of the office would vary by profession. A doctor would have medical equipment, whereas a lawyer's office would have general office equipment.

Ms. Gibson questioned the testimony that sales is not a profession, yet all of the careers listed in the ordinance, everyone sells services or products.

Mr. Janiw replied general sales would not be a profession, but a stock broker would be able to sell stock. The license or accreditation is what makes the job function professional. Most of the professions need to have at least a bachelor's degree. Mr. Janiw acknowledged real estate brokers can be licensed with a high school diploma.

Mr. Barricelli asked why his view of professions is so narrow, compared to Mr. Higgins view at the last meeting.

Mr. Janiw replied a landscaper was used as an example of a professional use. He does not agree because the title landscaper is too general. Professions are very specific in what they are performing, how they are performing it and the oversight of the performance. A job may require certain skills, but does not require the oversight because the services are not regulated.

Mr. Reich questioned the difference between careers and professions, using firefighters and project managers as examples that must have specific education, oversight, acceptance by a group of peers and training.

Mr. Janiw responded a firefighter is not a profession because higher education is not required and there is no licensure. In most cases, a project manager is a team leader and is usually part of a business. Licenses for project management are not issued by the state, but rather issued by an industry.

Mr. Cucchiaro asked if career and professional are mutually exclusive.

Mr. Janiw replied they are not. Typically a professional is an elevated level in a career.

Mr. Halleran asked if the State of New Jersey gave out licenses in team building, would the use be permitted in this zone.

Mr. Janiw replied it would have to meet the other criteria such as higher education, training and code of ethics. All of the aspect of a professional must be met.

The floor was opened to Public Comments.

Mr. Cucchiaro reiterated the application is to determine what the ordinance means when it says professional office. The only thing that is relevant is if the use fits into the definition.

Heidi Neufeld, 16 Jenson Court, Old Bridge was sworn in.

Ms. Neufeld stated that Villanova University reports that top corporations are completing certification programs in the area of PMI (Project Management) under the umbrella of team building. Ms. Neufeld feels project management is a profession and she is in the process of completing the course to become certified in team building. Ms. Neufeld is the regional manager for Amazing Escape Room, holds a degree in psychology and speech communication and is responsible for all of the hiring and training of the staff. Amazing Escape Room does have a formal training with a manual and the employees are specifically trained. Ms. Neufeld believes this is a profession.

Mr. Begley made a motion to close Public Comments, seconded by Mr. Jackson.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr
Disqualified	0	
Absent	1	Sims

Mr. Halleran recalled applicant Howard Klotzkin.

Mr. Halleran asked Mr. Klotzkin to substantiate the information on the Cherry Hill location.

Mr. Klotzkin stated the Cherry Hill location is not open yet. The original application was made and was approved as a business. The building inspector questioned the zoning and would be changing the approval to assembly. Mr. Klotzkin stated he would challenge that interpretation as he did not agree with it. Mr. Klotzkin reported software has been purchased to provide ratings and assessment of corporate teams. Many corporations and companies use the facility for their professional purpose of team building.

Mr. Giunco asked if there is a license issued to the Amazing Escape Room.

Mr. Klotzkin replied no.

The floor was opened to Board questions.

There were none.

The floor was opened to Public questions.

Being none, Mr. Begley made a motion to close the Public questions, seconded by Ms. Jordan.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	

Abstain            2            Bennett, Schnurr

Disqualified    0

Absent            1            Sims

The floor was opened to Public comments.

There being none, Mr. Barricelli made a motion to close Public comments, seconded by Mr. Begley.

Yes                7            Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,

No                0

Abstain           2            Bennett, Schnurr

Disqualified    0

Absent            1            Sims

Mr. Giunco confirmed the summation is addressing the interpretation of the application only. He read the ordinance for the B1 District giving emphasis the wording “principal uses in buildings permitted; the office of a member of a recognized profession”. He stated that is the concept of what the legislatures adopted as the ordinance. Mr. Giunco stated Section A includes the phrase “other generally recognized professional service personnel and organizations”. That definition was debated, but is carefully defined in the ordinance. Other personnel refers to the additional staff and employees that work with the members of a recognized profession. Mr. Giunco states Section B is very precise and allows no other uses than that which are listed. Section B does apply to this application

Mr. Giunco gave details on the Amazing Escape Room in Cherry Hill. The application showed that it is a recreational use. It did not list itself as a professional use, and is set up in a retail zone, not a professional office zone. Mr. Giunco argued team building is not a recognized profession. He argued there are some requirements that are generally considered for a profession; licensing, education, code of conduct, etc. Mr. Giunco referred to the N.E.R.I. case and the Supreme Court decision which gave a definition of a professional service. Mr. Giunco said throughout this presentation, there has been no standard that is applied in the team building exercise.

Mr. Giunco questioned if the Amazing Escape Room is a game or a team building exercise. He stated the board is compelled to rely on the applicable laws that were brought forward that distinguish a recognized profession. He argued the ordinance was written to have a restrictive interpretation, not a broad one. Mr. Giunco stated to be a permitted use, the Amazing Escape Room must be an office, which it is not and it is not a member of recognized profession. Mr. Giunco stated the use is inappropriate and not allowed in a B1 Zone. He urged the board to consider this does not meet the intent, the definition or the express language of the ordinance to be deemed a permitted use.

Mr. Halleran stated in a law course he learned, the words that are used in an ordinance are what they are defined in that law. He stated the Supreme Court Ruling in the N.E.R.I. case was not a zoning ordinance case. The ordinance of the Borough of Freehold does not define what is meant by professional service personnel or service organizations. Mr. Halleran feels Mr. Giunco is incorrect in stating “and other generally recognized service personnel and organizations” means support staff. It means it is expansive and ongoing.



Mr. Halleran stated the ordinance is old and when it was written no one had heard of team building. It is becoming more recognized. He stressed the intention of the organization should be considered more than what the intention of the customer is. The applicant's purpose is to have a business where he trains people to work together as teams. Mr. Halleran stated if the legislators meant to restrict the zone to the office of a member of a recognized licensed profession, it would have been stated in the ordinance. This profession is not any less professional because it does not require a license. Mr. Halleran stated team building is a general recognized professional service.

Mr. Cucchiaro reviewed several points to help the board in their deliberation.

Mr. Cucchiaro reviewed Mr. Stryker's testimony. He reported in cases where there are zoning violations, the zoning officer should work closely with the municipal attorney. There is no relevance in considering the inconsistencies of the letters.

Mr. Cucchiaro discussed how the board is to do its job. The role is to determine legislative intent. The primary way is to look at the plain language of the ordinance. Mr. Cucchiaro reviewed points presented to determine if this qualifies as an institution of higher education.

Mr. Cucchiaro reviewed the argument that the application is an office or a member of a recognized profession. The board was instructed when an ordinance provides specific examples and is followed by a general reference; the general is confined to being closely related to the specific example. If the characteristics of the business do not fit with the specific list in the ordinance, then it cannot be accepted under the general usage. Mr. Cucchiaro asked the board to also consider the need to read all regulations together so it all makes sense. He explained the difference of the N.E.R.I case ruling and the use of the definition of profession in different circumstances.

Mr. Cucchiaro reviewed the evidence that was presented. He stressed any internet posts by third parties should be disregarded as the people were not present and could not answer questions or clarify their statements. The website information is valid and relevant evidence. The board should determine is appropriate weight. The Cherry Hill zoning permit should be considered and is a relevant piece of evidence.

Mr. Begley stated he recognizes the value of team building. He considered if the intent of the business fits within the permitted definitions. Based on the evidence presented Mr. Begley does not feel it meets the definition of a permitted use in that zone. Mr. Begley is not in favor.

Ms. Jordan reported she looked at the criteria of the ordinance and the professional use, she does not believe the applicant does not meet the criteria. Ms. Jordan is not in favor.

Mr. Jackson stated it is not up to the board to redefine the ordinance and the board must follow the ordinance as it is written. In his opinion, the use is not permitted and the applicant should have a use variance hearing. Mr. Jackson is not in favor.

Mr. Barricelli reviewed how he considered testimony from both planning professionals as well as that of Mr. Stryker. He then considered the instructions of Mr. Cucchiaro and focused on the fact that the

general use must be related to the specific use and he does not feel it does. Mr. Barricelli is not in favor.

Ms. Gibson stated she believed professional use is a broader term. Business and professions are ever evolving and changing. She does not believe it fits in the use, but she believes the town needs to expand its economic plan to keep the town viable. Ms. Gibson is not in favor.

Mr. Friedman stated he feels this is a great use and likes it being in town. The task at hand is to determine if this is an office and whether it is part of a generally recognized profession. Based on the evidence it is not an office. He stated the evidence shows it is more like a professional team building center that would not be permitted in this zone. Mr. Friedman is not in favor.

Mr. Reich reported although there may be advances in education and licensing for the profession of team building, it is not a recognized profession yet. This is a great addition to the town, but it needs to fit where the zoning ordinance requires. He stated the business model needs to be the same in every town. The applicant can't be a professional use in Freehold and recreational use in Cherry Hill. Mr. Reich considered the instructions of Mr. Cucchiaro and determined the other generally recognized professional service personnel and organization allows an application as this fits into the zone. Mr. Reich is not in favor.

Mr. Jackson made a motion that the interpretation of the board is that the Amazing Escape Room does not fit in as intended by Ordinance 18.36.020, Principal Uses in Buildings Permitted in B-1 Zone, seconded by Mr. Friedman.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr
Disqualified	0	
Absent	1	Sims

Mr. Cucchiaro read Application Number PB-UV-2016-001, Applicant: Howard Klotzkin t/a Amazing Escape Room, LLC for Use Variance and Waiver of Site Plan will be carried to the Planning Board's May 11th meeting. He explained to the public no notices will be provided for the next hearing.

The floor was opened to Public comments.

Mr. Begley made a motion to close Public Comments, seconded by Mr. Jackson.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr
Disqualified	0	
Absent	1	Sims

Mr. Barricelli made a motion to close the meeting, seconded by Mr. Begley.

Yes	7	Barricelli, Begley, Friedman, Gibson, Jackson, Jordan, Reich,
No	0	
Abstain	2	Bennett, Schnurr
Disqualified	0	
Absent	1	Sims

Meeting adjourned at 9:35 PM.

Respectfully submitted,

Lynn Cannon